

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Streamlining Deployment of Small)	
Cell Infrastructure by Improving Wireless)	WT Docket No. 16-421
Facilities Siting Policies)	
)	
Mobilitie, LLC Petition for Declaratory Ruling)	

**Comments of the Virginia Department of Transportation,
An Agency of the Commonwealth of Virginia**

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SUMMARY

The Virginia Department of Transportation, an Agency of the Commonwealth of Virginia, strongly opposes the Commission's adoption of Federal standards for wireless and small cell/DAS siting, right-of-way ("ROW") access and application processing. There has been no demonstration of a nation-wide problem that warrants a "one size fits all" solution as Mobilitie, LLC requests in its Petition for Declaratory Ruling. Instead, individual states should be permitted to develop their own statutory and regulatory approaches designed to address the individual needs and circumstances of the particular state, and to protect the safety of the users of the roadways adjacent to the ROWs, as the Commonwealth of Virginia (the "Commonwealth") has done.

The Commonwealth's General Assembly has approved a wireless infrastructure siting bill, SB 1282, which is awaiting action by the Governor. If enacted, it will establish short deadlines to process applications for small cell facilities and will impose small charges for such applications.

The Commission should wait to gather experience from the Commonwealth and other states that are in the process of enacting wireless siting legislation before adopting national standards. Local conditions vary, and imposing a one-size-fits-all requirement before experience has been gained across a number of jurisdictions will be premature.

In addition, federally mandated access to state and locally-owned rights-of-way at less than fair market value would violate the Fifth Amendment to the U.S. Constitution as well as 47 U.S.C. §253(c).

At this early point in the adoption of 5G technologies, it would be unwise to restrict the ability of the Commonwealth and other states and local governments to adjust their own statutory and regulatory requirements to meet future changed circumstances.

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COMMENTS OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION

The Virginia Department of Transportation (“VDOT”), an Agency of the Commonwealth of Virginia, hereby submits its Comments in response to the Public Notice issued by the Commission’s Wireless Telecommunications Bureau (“WTB”) in the above-captioned proceeding.¹

For the reasons set forth below, VDOT strongly opposes the Commission’s adoption of Federal standards for wireless and small cell/DAS siting, right-of-way (“ROW”) access and application processing. There has been no demonstration of a nation-wide problem that warrants a “one size fits all” solution as Mobilitie, LLC requests in its Petition for Declaratory Ruling. Instead, individual states should be permitted to develop their own statutory and regulatory approaches designed to address the individual needs and circumstances of the particular state, and to protect the safety of the users of the roadways adjacent to the ROWs, as the

¹ *Comments Sought on Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies; Mobilitie, LLC Petition for Declaratory Ruling, WT Docket No. 16-421* (released December 22, 2016) (“Public Notice”). In its Order released on January 12, 2017, the WTB granted an extension of time to March 8 and April 7, 2017 respectively, for the submission of comments and reply comments in this proceeding.

Commonwealth of Virginia has done. Moreover, there are constitutional and statutory bars to the imposition of cost-based limits on access and application fees.

I. FACTUAL BACKGROUND

In response to the WTB's request for factual information, and in order to provide an appropriate context for these comments, VDOT provides the following information concerning its authority over ROWs in Virginia and the installation of small cell facilities in those ROWs.

A. VDOT

VDOT is responsible for building, maintaining and operating the roads, bridges and tunnels throughout the Commonwealth of Virginia. Its mission is to plan, deliver, operate and maintain a highway and road transportation system that is safe, enables easy movement of people and goods, enhances the economy and improves the quality of life in Virginia. The agency maintains a 58,000-mile network of highways and bridges and, in doing so, places the highest priority on maximizing, to the greatest degree possible, the safety of all users of this transportation system. The VDOT network is divided into the following categories²:

- **Interstate** – 1,119.57 miles of four-to-ten lane highways that connect states and major cities.
- **Primary** 8,064.06 miles of two-to-six lane roads that connect cities and towns with each other and with interstates.
- **Secondary** – 49,166.52 miles of local connector or county roads. Arlington (359 miles) and Henrico (1,279 miles) counties maintain their own county roads with VDOT funds.
- **Frontage** – 325.86 miles of frontage roads.

² The following information was published in 2015 and corrected as of October 2016.

The VDOT-maintained network comprises the third largest state-maintained highway system in the U.S., just behind North Carolina and Texas.

B. VDOT's Authority Over Right-of-Way

VDOT has authority over such ROW as is adjacent to the above roads and highways pursuant to authority granted to the Commonwealth Transportation Board. Section 33.2-210(A) of the Virginia Code³ provides as follows:

The Board shall have the power and duty to make regulations that are not in conflict with the laws of the Commonwealth *for the protection of* and covering traffic on *and for the use of* systems of state highways and shall have the authority to add to, amend, or repeal such regulations.

(Emphasis added.)

Pursuant to this statutory authority, VDOT issues land use permits for the use of the ROW, including for telecommunications facilities, in accordance with 24 Virginia Administrative Code (“VAC”) §30 – 151.⁴

VDOT's authority to issue such permits for the use of its rights-of-way for cellular facilities is generally conditioned upon prior approval by the relevant local government, which must first approve the proposed use.⁵

VDOT has spent many millions of dollars acquiring ROW throughout the Commonwealth. Because a majority of these acquisitions were made using significant

³ See also § 33.2-226 Va. Code, (grants to Commissioner of Highways authority to lease, sell or convey airspace supradjacent or subadjacent to highways in Virginia within his jurisdiction and in which the Commonwealth owns fee simple title.), 24 VAC 30-21-20 (“General Provisions Concerning Permits”), 24 VAC 30-21-30 (“General Provisions Concerning Use of Right of Way”).

⁴ For a link to these regulations, as well to the relevant permit applications, see the VDOT web site at <http://www.virginiadot.org/business/bu-landUsePermits.asp>.

⁵ See § 15.2-2232 Va. Code.

amounts of federal funds, VDOT's use of those ROWs is subject not only to Virginia law but also to the requirements imposed by Federal law and regulations. Among those is the obligation imposed by 23 C.F.R. §710.403(e) that, with respect to "all real property interests" that were obtained with funding under Title 23, U.S. Code, the use or disposal of such interests must be for "current fair market value." Section 710.403(e) (1) – (6) provides six exceptions to this requirement, including "when the grantee shows that an exception is in the overall public interest based on social, environmental, or economic benefits" (e)(1) or is proposed for use by "public utilities" (e)(2).

Any such proposal to charge less than fair market value must be submitted in writing to the Federal Highway Administration ("FHWA") and may be [but need not be] granted by it." 23 C.F.R § 710.403(e) (bracketed language added). It does not appear that, as a wireless infrastructure provider Mobilitie is itself a "public utility." Hence, it would seem that a request to the FHWA to provide facilities to Mobilitie in a federally-funded ROW at less than the fair market value would have to be made under the general public interest exception of Section 710.403(e).⁶

Significantly, in addition to the reservation of authority over the placement, construction, and modification of wireless facilities to states and local jurisdictions pursuant to 47 U.S.C. §332 (c)(7)(A), applicable Federal Rules also recognize the potential safety impact of utility use of ROW in a Federally funded highway project and specifically preserve the authority of state transportation departments like VDOT to regulate such use "in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility." 23 C.F.R. §645.205(c).

⁶ The cost-based charges proposed by Mobilitie for ROW access would undoubtedly be considerably less than fair market value.

Protecting the safety of drivers and passengers on its roadways is of primary importance to VDOT and is a critical factor in the placement of utility poles, including poles for wireless antennas.⁷ As an important part of its safety efforts, VDOT utilizes “clear zones.” A clear zone is an “unobstructed, relatively flat area beyond the edge of the traveled way that allows a driver to stop safely or regain control of a vehicle that leaves the traveled way.”⁸

Several factors are considered in setting clear zones for a particular roadway. These include its: speed limit; roadway type (shoulder and ditch section (generally called “rural”) versus curb and gutter section (generally called “urban”)), and traffic count.⁹

Through the creation of clear zones, VDOT increases the chances that a driver whose car has left the roadway can safely recover control of the vehicle without a crash or, if a crash occurs, reduces the resulting harm. Although there are some circumstances when utility poles

⁷ VDOT also considers the following factors in the placement of utility poles: location of poles that interfere with VDOT projects such as road widening; aesthetics (such as complaints from neighbors in residential subdivisions; and pole locations involving electronic equipment that might cause signal interference with VDOT equipment; and locations where poles may interfere with driver’s ability to see other road users or critical traffic control devices (traffic signals or signs). Moreover, if aerial cables are to be attached to these cellular poles, the cables must be beyond the minimum distance proscribed by OSHA and National Fire Protection Association from existing or proposed VDOT signal poles and other structures, in order to maintain VDOT’s ability to maintain those structures and to minimize risk of serious electrical injury by telecom company or VDOT employees/contractors. (VDOT often experiences considerable difficulty in placing traffic signal poles at intersections due to conflicts with existing aerial utilities.)

⁸ See FHWA web site at <https://www.fhwa.dot.gov/programadmin/clearzone.cfm>.

⁹ Applicable standards for the designation of “clear zones” can be found in the following publications: *Road Design Manual*, Appendix A, pp. A-25 through A-37 (VDOT, issued Jan. 2005, rev. Jan. 2017); *Roadside Design Guide*, Chapter 3, pp. 3 -1 through 3-30, with errata dated Feb. 2012 and July 2015 & Appendix A, pages A-25 thru A-37 (American Association of State Highway and Transportation Officials (“AASHTO”) 2011); *A Policy on Geometric Design of Highways and Streets* “Green Book,” Ch. 4, Sec. 4.6.1, page 4-15, Ch. 5, Sec. 5.2.4, page 5-8, Ch. 6, Sec. 6.2.4, page 6-8, Ch. 7, Section 7.2.4, page 7-6, Ch. 8, Sec. 8.2.10, page 8-5.

are located within clear zones,¹⁰ VDOT generally prevents this from happening.

Notwithstanding VDOT's efforts, crashes involving utility poles continue to be a significant problem on Virginia roadways, as demonstrated in the chart below, which includes all vehicle-utility pole collisions on Virginia roadways for the indicated years (both VDOT and non-VDOT).

YEAR	Count of ALL UTILITY POLE DOCUMENT_NBR
2011	2,463
2012	2,548
2013	2,518
2014	2,498
2015	2,669
2016	2,628
Grand Total	15,324

More detailed charts, indicating fatalities and injuries resulting from utility pole collisions, are attached hereto as Exhibit 1. In addition, attached as Exhibit 2 are diagrams of several incidents involving vehicle collisions with utility poles.

C. Telecommunications Infrastructure in VDOT Rights-Of-Way

At the present time, there are 79 separate cell tower sites located in VDOT ROWs, of which 53 are owned by VDOT. Of those 79 cell sites, over 92% are located in three areas: Northern Virginia near the District of Columbia; the Hampton Roads area; and the Richmond area. In addition, there are 12 power transmission line structure sites in VDOT ROW, 3,200

¹⁰ On some prescriptive easement roadways, for example, which typically are rural secondary highways, the clear zone may extend beyond the ROW. Because VDOT's authority only extends to the limits of the ROW, a utility company may permissibly locate a pole within the clear zone (but beyond the ROW). Moreover, some of the poles are breakaway light poles, which may still be safely placed within clear zones. In addition, some roadways have a barrier-face curb and therefore do not have a clear zone as such. However, because curbs do not have a significant re-directional capability, any poles located within the clear zone behind a curb should be of breakaway design.

miles of fiber optical cable, and 6 tunnel sites. There are also 215 co-located facilities in VDOT ROW.

D. Pending Small Cell Applications

To date, Mobilitie has notified VDOT of the proposed locations of 500 small cell facilities. With respect to approximately 450 of those locations, Mobilitie has provided only the latitude and longitude of the proposed site; because of the complete absence of other required information, these are not considered to be applications. Of the remaining Mobilitie applications, they contain only minimum information and are not considered to be complete applications. In addition, VDOT's Northern Virginia District Office issued temporary permits to Mobilitie for 7 pole locations in Prince William County. However, Mobilitie and Prince William County have been unable to reach agreement on zoning issues so it is anticipated that those temporary permits soon will be revoked.

In addition to the submissions from Mobilitie, there are approximately 10 applications from another entity that are not yet complete and a total of fewer than 10 applications from two other entities that are temporarily on hold while VDOT finalizes its process for handling small cell applications.

One of those entities filed a lawsuit against VDOT with respect to its rates for cell towers within the VDOT ROW. The case was dismissed by the trial court and an appeal was denied on procedural grounds. This has been the only legal action file against VDOT involving the wireless telecommunications infrastructure in its ROW.

E. Virginia Legislation on Wireless Communications Infrastructure

In the 2017 session of the Virginia General Assembly, Senate Bill 1282, dealing with wireless communications infrastructure, was approved by both houses of the General Assembly

and is awaiting action by Governor McAuliffe.¹¹ VDOT expects that the bill will become law in substantially its current form. A copy of the bill, as passed by the General Assembly, is attached hereto as Exhibit 3.

The legislation covers small cell facilities proposed to be co-located on existing structures and applies to both local governments and VDOT. Among other things, the legislation provides as follows:

- (1) It prohibits local governments from imposing a moratorium on considering zoning applications submitted by wireless carriers or infrastructure providers¹² and prohibits both local governments and VDOT from imposing a moratorium on considering requests for access to the public rights-of-way from such carriers or providers.¹³
- (2) It imposes time limits on both local governments and VDOT for processing small cell co-location applications. In the case of local governments, the time period is 60 days after receipt of the complete application with an ability to extend that period for an additional 30 days. The application will be deemed approved if not acted on within that original or extended period.¹⁴ The same requirement applies to applications to VDOT for single use permits.¹⁵ With respect to districtwide permits, VDOT is required to act within 30 days of its receipt of the complete application; otherwise the application is deemed granted.¹⁶
- (3) It imposes limitations on the processing fees that may be charged for small cell co-location applications by both local governments and VDOT. Local governments may charge up to \$100 each for up to five small cell facilities on a zoning permit application and \$50 for each additional small cell facility on such an application.¹⁷ They may also charge a fee of up to \$250 for an application to access a local right-of-way.¹⁸ VDOT is limited to a \$250 charge for processing an application for a districtwide or single use ROW permit.¹⁹

¹¹ Legislation that has been passed by the General Assembly may: become law (with or without the Governor's signature) or be amended or vetoed by the Governor and returned to the General Assembly.

¹² § 15.2-2316.5, p. 2, Ex. 3.

¹³ § 56-484.27(C), p. 4, Ex. 3.

¹⁴ § 15.2-2316.4(B)(1), p. 2, Ex. 3.

¹⁵ § 56-484.28(B), p. 4, Ex. 3.

¹⁶ § 56-484.28(A), p. 4, Ex. 3.

¹⁷ § 15.2-2316.4(B)(2), p. 2, Ex. 3.

¹⁸ § 56-384.27(B), p. 5, Ex. 3.

¹⁹ § 56-484.28(C), p. 4, Ex. 3.

- (4) It prohibits VDOT from charging any fee for the use of the ROW for the co-location of a small cell facility by a wireless carrier or infrastructure provider.²⁰ Local governments are subject to the same prohibition with respect to the use of a local ROW.²¹ However, they may impose zoning, subdivision, site plan and comprehensive plan fees of general application.²²
- (5) It prohibits local governments and VDOT from imposing any requirements for the use of public rights-of-way that are unfair, unreasonable, or discriminatory.²³

II. ADOPTION OF ADDITIONAL NATIONAL REQUIREMENTS BY THE FCC CONCERNING THE SITING OF SMALL CELL WIRELESS FACILITIES WOULD CONSTITUTE AN UNWARRANTED RESTRICTION ON THE AUTHORITY OF STATE AND LOCAL GOVERNMENTS.

Among other things, Mobilitie requests that the Commission issue a declaratory ruling to limit state and local government application fees and usage fees for public rights-of-way to the actual and/or incremental costs of such applications and usage and to rule that charges that exceed these costs are unlawful.²⁴ In addition to the constitutional and statutory bars to such action, discussed further below, VDOT submits that such action by the Commission is ill-advised because it would effectively preempt the ability of states and local governments to flexibly respond to changed circumstances and revise their procedures accordingly.

The action requested by Mobilitie is significantly different than the actions taken by the Commission in its 2009 Declaratory Ruling.²⁵ There, the Commission took two actions intended to facilitate the processing of applications for siting wireless telecommunications facilities. It adopted the 90/150-day “shot clock” for state and local processing of wireless siting

²⁰ § 56-484.28 (C), p. 4, Ex. 3.

²¹ § 56-484.29(B), p. 5, Ex. 3

²² *Id.*

²³ § 56.484.27(A), p. 4, Ex. 3.

²⁴ Petition for Declaratory Ruling of Mobilitie, LLC (Nov. 15, 2016).

²⁵ *Petition For Declaratory Ruling To Clarify Provisions Of Section 332(C)(7)(B) To Ensure Timely Siting Review*, Declaratory Ruling, 24 FCC Rcd. 13994 (2009), *aff'd*, *City of Arlington v. FCC*, 668 F.3d. 229 (5th Cir. 2012), *aff'd*, 133 S. Ct. 1863 (2013).

applications.²⁶ It also ruled that wireless siting applications could not be denied solely because one or more carriers already served a given geographic market.²⁷ Now, however, the Commission is considering a significant expansion of its role into wireless telecommunications siting by specifying what is meant by “just and reasonable compensation” under 47 U.S.C. § 253(c) of the Communications Act.²⁸

The important role of the state and local governments in the U.S. federal system of government has long been recognized.²⁹ Indeed, in its Report on Siting Wireless Communications Facilities (“Report”), issued less than one year ago, in July 2016, the Commission’s Intergovernmental Advisory Committee stated as follows:

“As can be expected, priorities and needs vary greatly by locality. As such a ‘one size fits all’ approach would never work for processing land use development applications. A ‘one size fits all approach’ certainly is not the best way to ensure harmonious and efficient buildout of wireless communications facilities.”³⁰

While the Report inexplicably goes unmentioned in the Commission’s Pubic Notice, VDOT submits that these same considerations militate in favor of leaving decisions concerning wireless facility siting and application/usage fees to the states and local governments. This is consistent with the statutory directive of Section 253 that “Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and

²⁶ *Id.* at 14012

²⁷ *Id.* at 14016.

²⁸ Section 253(c) states:

“Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.”

²⁹ See Justice Brandeis’s dissenting opinion in *New State Ice Co. v. Liebman*, 285 U.S. 262, 311 (1932) (“It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”)

³⁰ *Report*, p. 4.

reasonable compensation from telecommunications providers,” so long as it is done in a competitively neutral way and is publicly disclosed.

The evidence submitted thus far by Mobilitie in support of its Petition is primarily anecdotal and, as pointed out in the *Public Notice*, the rollout of 5G service is several years away. Thus, imposition of the “one size fits all” solution proposed by Mobilitie is, at best, premature. Indeed, VDOT believes that such a national “solution” imposed by the FCC, would be counterproductive.

Leaving such issues to the determination of state and local governments (subject to the requirements of Section 253) would not in any way denigrate the importance of these issues. To the contrary, as set forth in the Intergovernmental Advisory Committee’s *Report*, it would recognize the importance of a flexible approach, which can be adjusted as appropriate to the particular circumstances of the various states and localities.

The Commonwealth of Virginia presents an example of just such an approach. As discussed above, the Virginia General Assembly recently adopted legislation, SB 1282, which addresses processing time and application/ROW usage fees for small cell co-location applications. This legislation represents a determination by the General Assembly as to the approach that is appropriate for Virginia. Once signed by the Governor, it will impose upon VDOT and Virginia local governments requirements that are consistent with those urged by Mobilitie with respect to small cell co-located facilities. Importantly, the Virginia legislation leaves undisturbed VDOT’s ability to manage the location of wireless telecom facilities, which,

as discussed above, is critical to VDOT's ability to protect the safety of the users of Virginia's roadway system.³¹

Once it becomes law, and VDOT and localities within the Commonwealth, as well as wireless facility applicants, have had experience operating thereunder, this legislation may need to be adjusted by a future General Assembly. For example, at this point, it is not possible to predict the volume of applications that will be submitted and consequently whether the time periods for processing applications will be sufficient to process them.³²

However, if the Commission adopts the requirements proposed in its *Public Notice*, it may well have precluded such future changes by the General Assembly, as well as changes by other states and localities that have adopted similar requirements.

VDOT believes that the Commission should decline Mobilitie's request to impose additional national requirements on the procedures for siting wireless small cell facilities. Rather, it should leave those requirements to the various state and local governments, which can adjust them to meet varying local conditions, subject to the requirements of Section 253 of the Communications Act. In those circumstances where outstanding issues between mobile companies and state/local governments cannot be amicably resolved, "the courts are the appropriate forum to resolve conflicts"³³ as pointed in the July 2016 Report of the Commission's Intergovernmental Advisory Committee. Moreover, while we agree with other commenting

³¹ In any Declaratory Ruling issued by the Commission in this proceeding, VDOT requests that the Commission emphasize and reiterate the authority reserved to state and local governments by Section 253 to manage the public rights-of-way.

³² As noted above, VDOT has received notification from Mobilitie of its desire for a large number of proposed sites. How long it would take to process the same number of complete and valid applications is, at this point, a matter of pure speculation. VDOT might need to hire outside experts to help, and whether such experts are even available on short notice is not known at this point.

³³ *Report*, p. 20.

parties that the Commission lacks preemption authority over state and local rates under 253(c),³⁴ at least in the case of alleged violations of Sections 253(a) and (b), telecom providers may request that the Commission exercise its preemption authority under Section 253(d). to preempt State or local requirements in particular cases.³⁵

Furthermore, the Commission’s authority to grant Mobilitie’s Petition is constrained in important ways by the Fifth Amendment to the U.S. Constitution and by the provisions of 47 U.S.C. § 253.

III. FEDERALLY MANDATED ACCESS TO STATE AND LOCALLY OWNED RIGHTS-OF-WAY AT LESS THAN FAIR MARKET VALUE WOULD VIOLATE THE PROVISIONS OF THE FIFTH AMENDMENT AND 47 U.S.C. § 253.

In its Petition, Mobilitie requests that the Commission limit the “fair and reasonable compensation”³⁶ that may be imposed by state and local governments for the use of their rights-of-way to the cost of managing that right-of -way. But such a limitation would violate both the requirements of the Fifth Amendment to the U.S. Constitution and Section 253 of the Communications Act.

³⁴As pointed out in other comments, Section 253(d) grants the Commission preemption authority over alleged violations of 253(a) and (b). However, it is silent with respect to 253(c). Given the lengthy analyses of this issue offered by other commenting parties, we do not belabor the point here.

³⁵ 47 U.S.C. § 253(d) states:

“If, after notice and an opportunity for public comment, the Commission determines that a State or local government has permitted or imposed any statute, regulation, or legal requirement that violates subsection (a) or (b), the Commission shall preempt the enforcement of such statute, regulation, or legal requirement to the extent necessary to correct such violation or inconsistency.”

³⁶ See 47 U.S.C. § 253(c) “Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers . . .”

A. The Fifth Amendment Requires the Payment of Fair Market Value.

The U.S. Supreme Court has upheld the use of Federal eminent domain authority against state-owned property.³⁷ However, any such exercise of eminent domain power against the property of state or local governments is subject to the Takings Clause of the Fifth Amendment.³⁸ The Takings Clause states: “nor shall private property be taken for public use, without just compensation.” The term “just compensation” has been construed by the Supreme Court as meaning fair market value.³⁹ Moreover, the Supreme Court has held that the installation of telegraph and telephone lines, rails, and underground pipes or wires constitute “takings” within the meaning of the Fifth Amendment.⁴⁰ Accordingly, the Commission is constitutionally precluded from mandating that state and local governments provide access to publicly owned rights-of-way at less than fair market value.

Although the precise cost figure resulting from the adoption of Mobilitie’s position that state and local governments be limited to the cost of managing the rights-of-way would vary from jurisdiction to jurisdiction, it appears certain that it would be less than “fair market value.” Accordingly, VDOT submits that adoption of Mobilitie’s proposed limitation on right-of-way access/usage fees is prohibited by the Fifth Amendment.

³⁷ See, e.g., *State of Oklahoma ex el. Phillips v. Atkinson*, 313 U.S. 508, 534 (1941).

³⁸ In *U.S. v. 50 Acres of Land*, 469 U.S. 24, 31 (1984), the U.S. Supreme Court stated that “it is most reasonable to construe the reference to ‘private property’ in the Takings Clause of the Fifth Amendment as encompassing property of state and local governments when it is condemned by the United States.”

³⁹ See, e.g., *U.S. v. Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 81 (1913).

⁴⁰ *Loretto v. Teleprompter Manhattan CATV*, 458, U.S. 419 (1982).

B. Section 253 of the Communications Act Does Not Require Cost-Based Fees and is Subject to the Requirements of the Fifth Amendment.

Section 253(c) of the Communications Act permits state and local governments to require “fair and reasonable compensation . . . for use of public rights-of-way.” It does not limit such compensation to cost-based rates as urged by Mobilite. Several U.S. Courts of Appeals have upheld governmentally imposed usage fees linked to revenue generated by particular wireless sites.⁴¹ Moreover, at least one such court has ruled that rates cannot be challenged unless the rates are so burdensome that they amount to an effective prohibition of entry into the telecommunications services market under Section 253(a).⁴²

Because they are predicated on costs, rather than fair market value, VDOT also opposes the Commission’s proposal to use its cost-based pole attachment formula as a basis for setting rates for small cell co-location charges.⁴³ As the Court of Appeals for the Sixth Circuit noted in its decision in *TCG Detroit v. City of Dearborn*, the “just and reasonable” language utilized in the Pole Attachment Act, is different than the “fair and reasonable compensation” language of Section 253.⁴⁴ The court found that the Pole Attachment Act refers to the recovery of additional costs borne by the utility in providing pole attachments while Section 253 refers to compensation (rather than costs) and that only the totality of the circumstances can illuminate whether a fee is “fair and reasonable.”⁴⁵ Thus, in response to the specific question asked by the Commission in

⁴¹ See, e.g., *TCG Detroit v. City of Dearborn*, 206 F.3d 618 (6th Cir. 2000); *TCG New York, Inc. v. City of White Plains*, 305 F.3d 67 (2nd Cir. 2002).

⁴² 47 U.S.C. § 253(a) states as follows; “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” See *Level 3 Communications LLC v. City of St. Louis*, 477 F.3d 528, 532 (2007).

⁴³ *Public Notice*, p. 14.

⁴⁴ *TCG Detroit v. City of Dearborn*, *supra* at note 18, 206 F.3d at 624-25 (citing district court opinion with approval).

⁴⁵ *Id.*

its *Public Notice*, the Commission’s pole attachment formula does not provide a “useful” analog for the “reasonable compensation” that state and local governments may assess under Section 253.⁴⁶

In any event, the provisions of Section 253 are subject to the requirements of the Fifth Amendment Takings Clause which, as noted above, requires that mandated access to publicly owned rights-of-way for wireless facilities be provided at fair market value.

Accordingly, the cost-based access to public rights-of-way sought by Mobilitie, including that owned by VDOT, would violate Section 253, as well as the Fifth Amendment.

CONCLUSION

For the above reasons, VDOT requests that the Commission deny Mobilitie’s Petition for Declaratory Ruling. Requiring access to public rights-of-way by small cell wireless facilities at cost-based rates would violate the requirements of the Fifth Amendment to the U.S. Constitution as well as the provisions of 47 U.S.C. § 253. In addition, it would unwisely restrict the ability of the Commonwealth of Virginia, and other state and local governments in the United

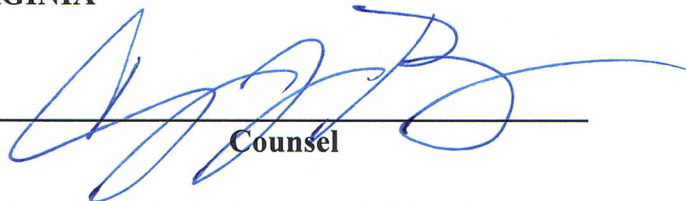
⁴⁶ Although it is true that SB 1282, as passed by the Virginia General Assembly, would require VDOT to provide access to small cell facilities proposed for co-location in its rights-of-way at less than fair market value, states are free to voluntarily provide access to their own property without reference to the requirements of the Fifth Amendment.

States, to adjust their own statutory and regulatory requirements to accommodate changed circumstances in the future.

Respectfully submitted,

**VIRGINIA DEPARTMENT OF TRANSPORTATION,
AN AGENCY OF THE COMMONWEALTH OF
VIRGINIA**

By: _____



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EXHIBIT 1

VIRGINIA UTILITY POLE COLLISIONS INJURIES & FATALITIES

2011 - 2015 crash summary table that involved at least one vehicle hit a utility pole at first or second or third or fourth or the most harmful event

YEAR	TOTAL CRASH	FATAL CRASH	INJURY CRASH	PDO CRASH	FATALITIES (PERSONS)	INJURIES (PERSONS)
2011	3,060	28	1,273	1,759	31	1,684
2012	3,116	41	1,335	1,740	42	1,786
2013	3,089	28	1,197	1,864	30	1,582
2014	3,158	29	1,175	1,954	31	1,610
2015	3,362	39	1,237	2,086	39	1,729
TOTAL	15,785	165	6,217	9,403	173	8,391

2011 - 2015 crash summary table that involved at least one vehicle hit a utility pole at the most harmful event

YEAR	TOTAL CRASH	FATAL CRASH	INJURY CRASH	PDO CRASH	FATALITIES (PERSONS)	INJURIES (PERSONS)
2011	2,312	15	905	1,392	16	1,111
2012	2,347	22	917	1,408	22	1,133
2013	2,316	17	826	1,473	19	1,012
2014	2,305	13	779	1,513	13	989
2015	2,452	21	839	1,592	21	1,060
TOTAL	11,732	88	4,266	7,378	91	5,065

EXHIBIT 2

DIAGRAMS OF SELECTED UTILITY POLE COLLISIONS

Officer Initials BC	Badge # 5299	Commonwealth of Virginia - Department of Motor Vehicles	FR300P (Rev 1/12)
Revised Report <input type="radio"/>		Police Crash Report	Page 4 of 4
CRASH			
Crash Date 01/05/2015	MILITARY Time (24 hr clock) 20:39	County of Crash Loudoun	City of <input checked="" type="checkbox"/> Leesburg
			Local Case Number 2014-665

VEHICLE # 1	CRASH DIAGRAM	VEHICLE #
Fill In Impact Area(s). Initial Impact.		Fill In Impact Area(s). Initial Impact.
<div>12 11 10 9 8 7 6 E</div>		<div>12 11 10 9 8 7 6</div>
Veh Dir of Travel-N/S/E/W		Veh Dir of Travel-N/S/E/W
VEHICLE #		VEHICLE #
Fill In Impact Area(s). Initial Impact.		Fill In Impact Area(s). Initial Impact.
<div>12 11 10 9 8 7 6</div>		<div>12 11 10 9 8 7 6</div>
Veh Dir of Travel-N/S/E/W		Veh Dir of Travel-N/S/E/W

DAMAGE TO PROPERTY OTHER THAN VEHICLES

Approx. Repair Cost	Object Struck (Tree, Fence, etc.)	Property Owners Name (Last, First, Middle)	Address (Street and Number)	VDOT Property
5000	LIGHT POLE	DOMINION POWER	1901 REDDY DRIVE, WOODBRIDGE, VA.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

CRASH DESCRIPTION

VEHICLE #1 MADE A LEFT TURN TO GO EAST BOUND ON GREENWAY DR FROM ALLMAN WAY. VEHICLE #1 DID NOT SUCCESSFULLY NEGOTIATE THE TURN AND STRUCK A LIGHT POLE ON THE SHOULDER OF GREENWAY DR. DRIVER SAID THAT THE STEERING WHEEL LOCKED, BUT WAS ABLE TO MOVE THE VEHICLE FROM THE ORIGINAL POSITION PRIOR TO LPD ARRIVAL.

CRASH EVENTS

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event
1	3				3

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event

First Harmful Event of Entire Crash that Results in First Injury or Damage.
3

COLLISION WITH FIXED OBJECT


- | | |
|---|---------------------------|
| 1. Bank Or Ledge | 10. Other |
| 2. Trees | 11. Jersey Wall |
| 3. Utility Pole | 12. Building/Structure |
| 4. Fence Or Post | 13. Curb |
| 5. Guard Rail | 14. Ditch |
| 6. Parked Vehicle | 15. Other Fixed Object |
| 7. Tunnel, Bridge, Underpass, Culvert, etc. | 16. Other Traffic Barrier |
| 8. Sign, Traffic Signal | 17. Traffic Sign Support |
| 9. Impact Cushioning Device | 18. Mailbox |

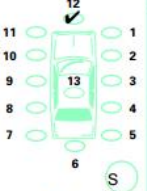
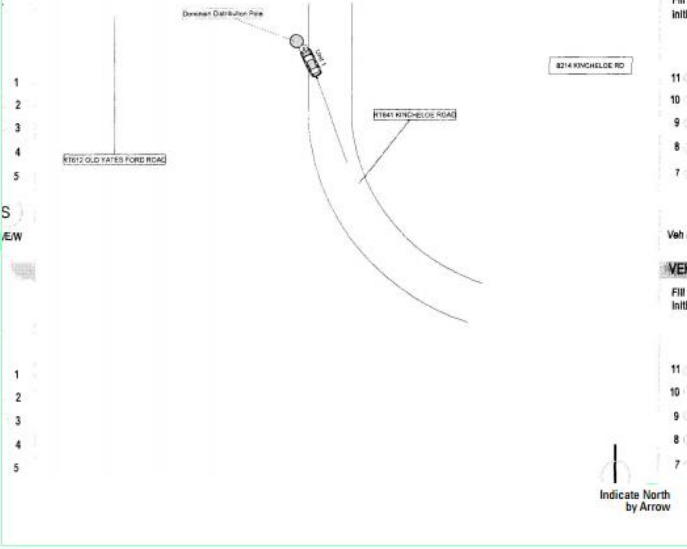
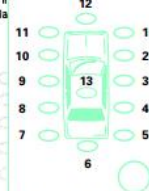
COLLISION WITH PERSON, MOTOR VEHICLE OR NON-FIXED OBJECT

- | | |
|--------------------------------|----------------------------|
| 19. Pedestrian | 24. Work Zone |
| 20. Motor Vehicle In Transport | 25. Maintenance Equipment |
| 21. Train | 26. Other Movable Object |
| 22. Bicycle | 27. Unknown Movable Object |
| 23. Animal | 27. Other |

NON-COLLISION

- | | |
|-------------------------|-----------------------------------|
| 28. Ran Off Road | 35. Cross Median |
| 29. Jack Knife | 36. Cross Centerline |
| 30. Overturn (Rollover) | 37. Equipment Failure (Tire, etc) |
| 31. Downhill Runaway | 38. Immersion |
| 32. Cargo Loss or Shift | 39. Fell/Jumped From Vehicle |
| 33. Explosion or Fire | 40. Thrown or Falling Object |
| 34. Separation of Units | 41. Non-Collision Unknown |
| | 42. Other Non-Collision |

Officer Initials lg Badge # 31709		Commonwealth of Virginia • Department of Motor Vehicles				FR300P (Rev 1/12)	
Revised Report <input type="checkbox"/>		Police Crash Report		Page 4 of 4			
CRASH							
Crash Date 09/07/2012		MILITARY Time (24 hr clock) 20:30		County of Crash Fairfax County		Local Case Number 20122520075	
				City of <input type="checkbox"/>			
				Town of <input type="checkbox"/>			

VEHICLE # 1 Fill In Impact Area(s). Initial Impact.  Veh Dir of Travel—N/S/E/W S	CRASH DIAGRAM  Indicate North by Arrow	VEHICLE # Fill In Impact Area(s). Initial Impact.  Veh Dir of Travel—N/S/E/W S
--	--	--

DAMAGE TO PROPERTY OTHER THAN VEHICLES							
Approx. Repair Cost	Object Struck (Tree, Fence, etc.)	Property Owners Name (Last, First, Middle)	Address (Street and Number)	VDOT Property			
3000	distribution	dominion power,	1901 reddy dr woodbridge, va	<input checked="" type="checkbox"/>			

CRASH DESCRIPTION
Vehicle #1 was travelling south on RT 641/Kincheloe Rd approximately a mile West of OldYate Ford Rd. Vehicle #1 fail to maintain proper control and ran off the road to the left striking a Distribution Pole belonging to Dominion Power Company.

CRASH EVENTS						CRASH EVENTS					
Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event	Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event
1	3				3						

First Harmful Event of Entire Crash that Results in First Injury or Damage. 3	COLLISION WITH FIXED OBJECT 1. Bank Or Ledge 2. Trees 3. Utility Pole 4. Fence Or Post 5. Guard Rail 6. Parked Vehicle 7. Tunnel, Bridge, Underpass, Culvert, etc. 8. Sign, Traffic Signal 9. Impact Cushioning Device 10. Other 11. Jersey Wall 12. Building/Structure 13. Curb 14. Ditch 15. Other Fixed Object 16. Other Traffic Barrier 17. Traffic Sign Support 18. Mailbox	COLLISION WITH PERSON, MOTOR VEHICLE OR NON-FIXED OBJECT 19. Pedestrian 20. Motor Vehicle In Transport 21. Train 22. Bicycle 23. Animal 24. Work Zone 25. Maintenance Equipment 26. Other Movable Object 27. Other 28. Ran Off Road 29. Jack Knife 30. Overtake (Rollover) 31. Downhill Runaway 32. Cargo Loss or Shift 33. Explosion or Fire 34. Separation of Units 35. Cross Median 36. Cross Centerline 37. Equipment Failure (Tire, etc) 38. Immersion 39. Fell/Jumped From Vehicle 40. Thrown or Falling Object 41. Non-Collision Unknown 42. Other Non-Collision
--	---	--

Revised Report ✓

Police Crash Report

CRASH			
Crash Date	MM DD YYYY	MILITARY Time (24 hr clock)	County of Crash
02/16/2015	16:53		
		City of	Local Case Number
		Town of Hopewell	2015000720

CRASH DIAGRAM

VEHICLE # 1

Fill In Impact Area(s).
Initial Impact.

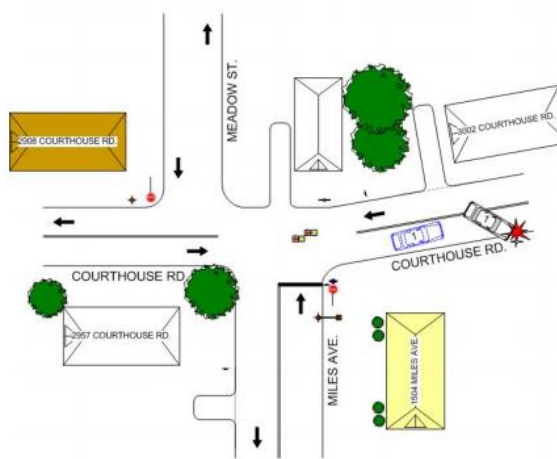
A diagram of a car in a parking lot with numbered spots 6-13. Spot 12 is the starting point, and spot 13 is the target. Arrows indicate a path from 12 to 13.

Veh Dir of Travel-N/S/E/WVEHICLE #

Fill In Impact Area(s).
Initial Impact.

Veh Dir of Travel—N/S/E/W

 Indicate North



Drawing Not To Scale

VEHICLE #

Fill In Impact Area(s)
Initial Impact.

A diagram of a car with numbered callouts 6 through 13 pointing to various components. The callouts are: 6 (front bumper), 7 (front wheel), 8 (front door), 9 (rear door), 10 (rear wheel), 11 (rear bumper), 12 (rear window), and 13 (front window).

Veh Dir of Travel-N/S/E/WVEHICLE #

Fill In Impact Area(s).
Initial Impact.

Veh Dir of Travel-N/S/E/W**DAMAGE TO PROPERTY OTHER THAN VEHICLES**

Approx. Repair Cost	Object Struck (Tree, Fence, etc.)	Property Owners Name (Last, First, Middle)	Address (Street and Number)	VDOT Property
100	TELEPHONE POLE	DOMINION POWER	1340 E WASHINGTON STREET PETERSE	

CRASH DESCRIPTION

VEHICLE ONE WAS DRIVING WEST ON COURTHOUSE RD IN THE SNOW. LOST TRACTION AND COLLIDED WITH A TELEPHONE POLE.

CRASH EVENTS

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event	Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event
1	3				3						
Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event	Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event

First Harmful Event of Entire Crash that Results in First Injury or Damage.
3

COLLISION WITH FIXED OBJECT

1. Bank Or Ledge
2. Trees
3. Utility Pole
4. Fence Or Post
5. Guard Rail
6. Parked Vehicle
7. Tunnel, Bridge, Underpass, Culvert, etc.
8. Sign, Traffic Signal
9. Impact Cushioning Device
10. Other
11. Jersey Wall
12. Building/Structure
13. Curb
14. Ditch
15. Other Fixed Object
16. Other Traffic Barrier
17. Traffic Sign Support
18. Mailbox

COLLISION WITH PERSON, MOTOR VEHICLE
OR NON-FIXED OBJECT

- | | |
|--------------------------------|----------------------------|
| 19. Pedestrian | 24. Work Zone |
| 20. Motor Vehicle In Transport | Maintenance Equipment |
| 21. Train | 25. Other Movable Object |
| 22. Bicycle | 26. Unknown Movable Object |
| 23. Animal | 27. Other |

NON-COLLISION

- Non-Collision**
- | | |
|-------------------------|-----------------------------------|
| 28. Ran Off Road | 35. Cross Median |
| 29. Jack Knife | 36. Cross Centerline |
| 30. Overturn (Rollover) | 37. Equipment Failure (Tire, etc) |
| 31. Downhill Runaway | 38. Immersion |
| 32. Cargo Loss or Shift | 39. Fell/Jumped From Vehicle |
| 33. Explosion or Fire | 40. Thrown or Falling Object |
| 34. Separation of Units | 41. Non-Collision Unknown |
| | 42. Other Non-Collision |

Officer Initials <u>DN</u>	Badge # <u>CP99</u>	Commonwealth of Virginia • Department of Motor Vehicles	FR300P (Rev 1/12)
Revised Report <input type="radio"/>		Police Crash Report	Page <u>4</u> of <u>4</u>
CRASH			
Crash Date <u>01/02/2016</u>	MILITARY Time (24 hr clock) <u>16:26</u>	County of Crash	City of <input checked="" type="radio"/> Town of Charlottesville
			Local Case Number <u>C2016-00027</u>

VEHICLE # 1 Fill In Impact Area(s). Initial Impact. <u>1</u> 11 12 1 10 2 9 13 3 8 4 7 5 6 N Veh Dir of Travel—N/S/E/W	CRASH DIAGRAM 	VEHICLE # Fill In Impact Area(s). Initial Impact. 11 12 1 10 2 9 13 3 8 4 7 5 6 N Veh Dir of Travel—N/S/E/W
VEHICLE # Fill In Impact Area(s). Initial Impact. 11 12 1 10 2 9 13 3 8 4 7 5 6 N Veh Dir of Travel—N/S/E/W		VEHICLE # Fill In Impact Area(s). Initial Impact. 11 12 1 10 2 9 13 3 8 4 7 5 6 N Veh Dir of Travel—N/S/E/W

DAMAGE TO PROPERTY OTHER THAN VEHICLES

Approx. Repair Cost	Object Struck (Tree, Fence, etc.)	Property Owners Name (Last, First, Middle)	Address (Street and Number)	VDOT Property <input type="radio"/> Yes <input type="radio"/> No
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CRASH DESCRIPTION

VEHICLE #1 WAS TRAVELING NORTH ON HARRIS ST. VEHICLE #1 WAS DISTRACTED BY THE SUNLIGHT AND RAN OFF THE ROAD AND HIT A TELEPHONE POLE.

CRASH EVENTS

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event
1	3				3

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event

First Harmful Event of Entire Crash that Results in First Injury or Damage.
3**COLLISION WITH FIXED OBJECT**

- | | |
|---|---------------------------|
| 1. Bank Or Ledge | 10. Other |
| 2. Trees | 11. Jersey Wall |
| 3. Utility Pole | 12. Building/Structure |
| 4. Fence Or Post | 13. Curb |
| 5. Guard Rail | 14. Ditch |
| 6. Parked Vehicle | 15. Other Fixed Object |
| 7. Tunnel, Bridge, Underpass, Culvert, etc. | 16. Other Traffic Barrier |
| 8. Sign, Traffic Signal | 17. Traffic Sign Support |
| 9. Impact Cushioning Device | 18. Mailbox |

COLLISION WITH PERSON, MOTOR VEHICLE OR NON-FIXED OBJECT

- | | |
|--------------------------------|----------------------------|
| 19. Pedestrian | 24. Work Zone |
| 20. Motor Vehicle In Transport | 25. Other Movable Object |
| 21. Train | 26. Unknown Movable Object |
| 22. Bicycle | 27. Other |
| 23. Animal | |

NON-COLLISION

- | | |
|-------------------------|-----------------------------------|
| 28. Ran Off Road | 35. Cross Median |
| 29. Jack Knife | 36. Cross Centerline |
| 30. Overturn (Rollover) | 37. Equipment Failure (Tire, etc) |
| 31. Downhill Runaway | 38. Immersion |
| 32. Cargo Loss or Shift | 39. Fell/Jumped From Vehicle |
| 33. Explosion or Fire | 40. Thrown or Falling Object |
| 34. Separation of Units | 41. Non-Collision Unknown |
| | 42. Other Non-Collision |

Officer Initials <u>MT</u>	Badge # <u>84</u>	Commonwealth of Virginia • Department of Motor Vehicles	FR300P (Rev 1/12)
Revised Report <input type="checkbox"/>		Police Crash Report	Page <u>4</u> of <u>4</u>
CRASH			
Crash Date <u>02/05/2011</u>	MILITARY Time (24 hr clock) <u>11:25</u>	County of Crash <u>SCOTT COUNTY</u>	City of <input checked="" type="checkbox"/> Town of <u>GATE CITY</u>
			Local Case Number <u>2011-01895</u>

VEHICLE # 1 Fill In Impact Area(s). Initial Impact. Veh Dir of Travel—N/S/E/W	CRASH DIAGRAM th w	VEHICLE # Fill In Impact Area(s). Initial Impact. Veh Dir of Travel—N/S/E/W
VEHICLE # Fill In Impact Area(s). Initial Impact. Veh Dir of Travel—N/S/E/W		VEHICLE # Fill In Impact Area(s). Initial Impact. Veh Dir of Travel—N/S/E/W

DAMAGE TO PROPERTY OTHER THAN VEHICLES

Approx. Repair Cost	Object Struck (Tree, Fence, etc.)	Property Owners Name (Last, First, Middle)	Address (Street and Number)	VOOT Property Yes No
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CRASH DESCRIPTION

VEHICLE 1 WAS IN TURN LANE, TURNING LEFT, ALLEGED THAT VEH WAS STOPPED AT INTERSECTION. WHILE TURNING LEFT LOOKED TO MAKE SURE VEH DID NOT PULL OUT, VEH 1 MADE CONTACT WITH POWER POLE ON RIGHT FRONT OF VEHICLE.

CRASH EVENTS

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event
1	3				3

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event

First Harmful Event of Entire Crash that Results in First Injury or Damage.
3

COLLISION WITH FIXED OBJECT

- | | |
|---|---------------------------|
| 1. Bank Or Ledge | 10. Other |
| 2. Trees | 11. Jersey Wall |
| 3. Utility Pole | 12. Building/Structure |
| 4. Fence Or Post | 13. Curb |
| 5. Guard Rail | 14. Ditch |
| 6. Parked Vehicle | 15. Other Fixed Object |
| 7. Tunnel, Bridge, Underpass, Culvert, etc. | 16. Other Traffic Barrier |
| 8. Sign, Traffic Signal | 17. Traffic Sign Support |
| 9. Impact Cushioning Device | 18. Mailbox |

COLLISION WITH PERSON, MOTOR VEHICLE OR NON-FIXED OBJECT

- | | |
|--------------------------------|----------------------------|
| 19. Pedestrian | 24. Work Zone |
| 20. Motor Vehicle In Transport | Maintenance Equipment |
| 21. Train | 25. Other Movable Object |
| 22. Bicycle | 26. Unknown Movable Object |
| 23. Animal | 27. Other |

NON-COLLISION

- | | |
|-------------------------|-----------------------------------|
| 28. Ran Off Road | 35. Cross Median |
| 29. Jack Knife | 36. Cross Centerline |
| 30. Overturn (Rollover) | 37. Equipment Failure (Tire, etc) |
| 31. Downhill Runaway | 38. Immersion |
| 32. Cargo Loss or Shift | 39. Fell/Jumped From Vehicle |
| 33. Explosion or Fire | 40. Thrown or Falling Object |
| 34. Separation of Units | 41. Non-Collision Unknown |
| | 42. Other Non-Collision |

Officer Initials BR Badge # 1383 Commonwealth of Virginia • Department of Motor Vehicles
Police Crash Report FR300P (Rev 1/12)
Revised Report ☐ Page 4 of 4

CRASH
Crash Date 03/05/2011 Military Time (24 hr clock) 06:55 County of Crash ARLINGTON COUNTY City of Town of Local Case Number 110305016

CRASH DIAGRAM

VEHICLE # 1
Fill In Impact Area(s). Initial Impact. 12
11 12 1
10 13 2
9 6 3
8 E 4
7 6 5
Veh Dir of Travel—N/S/E/W

VEHICLE #
Fill In Impact Area(s). Initial Impact.
11 12 1
10 13 2
9 6 3
8 E 4
7 6 5
Veh Dir of Travel—N/S/E/W

VEHICLE #
Fill In Impact Area(s). Initial Impact.
11 12 1
10 13 2
9 6 3
8 E 4
7 6 5
Veh Dir of Travel—N/S/E/W

VEHICLE #
Fill In Impact Area(s). Initial Impact.
11 12 1
10 13 2
9 6 3
8 E 4
7 6 5
Veh Dir of Travel—N/S/E/W

DAMAGE TO PROPERTY OTHER THAN VEHICLES
Approx. Repair Cost 5000 Object Struck (Tree, Fence, etc.) LIGHT POLE, Property Owners Name (Last, First, Middle) ARLINGTON COUNTY, Address (Street and Number) 1425 N COURTHOUSE RD, ARLINGTON, VDOT Property Yes

CRASH DESCRIPTION

AN UNKNOWN VEHICLE STRUCK A LIGHT POLE ON THE SIDEWALK FROM AN UNKNOWN DIRECTION AND FLED THE SCENE.

CRASH EVENTS

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event	Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event
1	3				3						
Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event	Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event

First Harmful Event of Entire Crash that Results in First Injury or Damage.
3**COLLISION WITH FIXED OBJECT**

1. Bank Or Ledge
2. Trees
3. Utility Pole
4. Fence Or Post
5. Guard Rail
6. Parked Vehicle
7. Tunnel, Bridge, Underpass, Culvert, etc.
8. Sign, Traffic Signal
9. Impact Cushioning Device
10. Other
11. Jersey Wall
12. Building/Structure
13. Curb
14. Ditch
15. Other Fixed Object
16. Other Traffic Barrier
17. Traffic Sign Support
18. Mailbox

COLLISION WITH PERSON, MOTOR VEHICLE OR NON-FIXED OBJECT

19. Pedestrian
20. Motor Vehicle In Transport
21. Train
22. Bicycle
23. Animal
24. Work Zone
25. Maintenance Equipment
26. Other Movable Object
27. Other

NON-COLLISION

28. Ran Off Road
29. Jack Knife
30. Overturn (Rollover)
31. Downhill Runaway
32. Cargo Loss or Shift
33. Explosion or Fire
34. Separation of Units
35. Cross Median
36. Cross Centerline
37. Equipment Failure (Tire, etc)
38. Immersion
39. Fell/Jumped From Vehicle
40. Thrown or Falling Object
41. Non-Collision Unknown
42. Other Non-Collision

Officer Initials DG Badge # 337

Commonwealth of Virginia • Department of Motor Vehicles



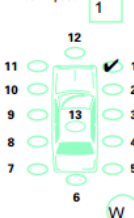
FR300P (Rev 1/12)

Revised Report ☐

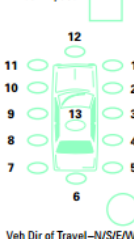
Police Crash Report

Page 4 of 4

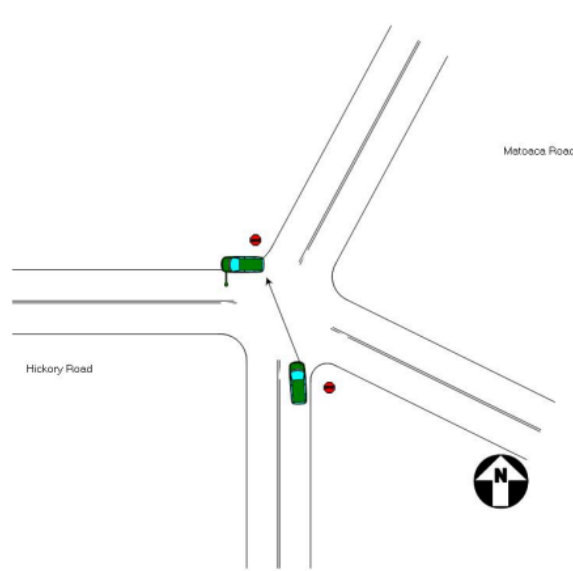
CRASH

Crash Date 03/06/2016MILITARY Time (24 hr clock) 17:45County of Crash
ChesterfieldCity of
Town ofLocal Case Number
201603060171VEHICLE # 1Fill In Impact Area(s).
Initial Impact.

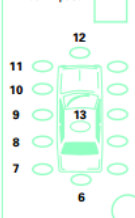
VEHICLE

Fill In Impact Area(s).
Initial Impact.

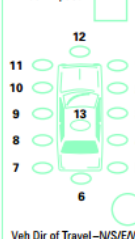
CRASH DIAGRAM



VEHICLE

Fill In Impact Area(s).
Initial Impact.

VEHICLE

Fill In Impact Area(s).
Initial Impact.

DAMAGE TO PROPERTY OTHER THAN VEHICLES

Approx. Repair Cost
100Object Struck (Tree, Fence, etc.)
LIGHT POLEProperty Owners Name (Last, First, Middle)
VERIZONAddress (Street and Number)
6600 HICKORY ROADVDOT Property
☒ Yes ☐ No

CRASH DESCRIPTION

VEHICLE 1 WAS MAKING LEFT HAND TURN OFF OF MATOACA ROAD ONTO HICKORY ROAD. VEHICLE 1 WENT TO WIDE ON THE TURN AND STRUCK THE LIGHTPOLE.

CRASH EVENTS

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event
1	3				3

Vehicle #	First Event	Second Event	Third Event	Fourth Event	Most Harmful Event

First Harmful Event
of Entire Crash that
Results in First Injury
or Damage.
3

COLLISION WITH FIXED OBJECT

- | | |
|---|---------------------------|
| 1. Bank Or Ledge | 10. Other |
| 2. Trees | 11. Jersey Wall |
| 3. Utility Pole | 12. Building/Structure |
| 4. Fence Or Post | 13. Curb |
| 5. Guard Rail | 14. Ditch |
| 6. Parked Vehicle | 15. Other Fixed Object |
| 7. Tunnel, Bridge, Underpass, Culvert, etc. | 16. Other Traffic Barrier |
| 8. Sign, Traffic Signal | 17. Traffic Sign Support |
| 9. Impact Cushioning Device | 18. Mailbox |

COLLISION WITH PERSON, MOTOR VEHICLE
OR NON-FIXED OBJECT

- | | |
|--------------------------------|----------------------------|
| 19. Pedestrian | 24. Work Zone |
| 20. Motor Vehicle In Transport | 25. Maintenance Equipment |
| 21. Train | 26. Other Movable Object |
| 22. Bicycle | 27. Unknown Movable Object |
| 23. Animal | 27. Other |

NON-COLLISION

- | | |
|-------------------------|-----------------------------------|
| 28. Ran Off Road | 35. Cross Median |
| 29. Jack Knife | 36. Cross Centerline |
| 30. Overturn (Rollover) | 37. Equipment Failure (Tire, etc) |
| 31. Downhill Runaway | 38. Immersion |
| 32. Cargo Loss or Shift | 39. Fell/Jumped From Vehicle |
| 33. Explosion or Fire | 40. Thrown or Falling Object |
| 34. Separation of Units | 41. Non-Collision Unknown |
| | 42. Other Non-Collision |

EXHIBIT 3
VIRGINIA LEGISLATION
CONCERNING WIRELESS INFRASTRUCTURE SITING
(SB 1282)

17105460D

SENATE BILL NO. 1282

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Kilgore
on February 14, 2017)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, relating to wireless communications infrastructure.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 22 of Title 15.2 an article numbered 7.2, consisting of sections numbered 15.2-2316.3, 15.2-2316.4, and 15.2-2316.5, and by adding in Title 56 a chapter numbered 15.1, consisting of sections numbered 56-484.26 through 56-484.31, as follows:

Article 7.2.

Zoning for Wireless Communications Infrastructure.

§ 15.2-2316.3. Definitions.

As used in this article, unless the context requires a different meaning:

"Antenna" means communications equipment that transmits or receives electromagnetic radio signals used in the provision of any type of wireless communications services.

"Base station" means a station that includes a structure that currently supports or houses an antenna, transceiver, coaxial cables, power cables, or other associated equipment at a specific site that is authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies, and other associated electronics.

"Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on, under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support structure. "Co-location" has a corresponding meaning.

"Department" means the Department of Transportation.

"Existing structure" means any structure that is installed or approved for installation at the time a wireless services provider or wireless infrastructure provider provides notice to a locality or the Department of an agreement with the owner of the structure to co-locate equipment on that structure.

"Existing structure" includes any structure that is currently supporting, designed to support, or capable of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles, flag poles, signs, and water towers.

"Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

"Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

"Utility pole" means a structure owned, operated, or owned and operated by a public utility, local government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or wires for communications, cable television, or electricity.

"Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

"Wireless facility" means equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless services, such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

"Wireless infrastructure provider" means any person that builds or installs transmission equipment, wireless facilities, or wireless support structures, but that is not a wireless services provider.

60 "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i);
61 (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial
62 mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices
63 through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or
64 unlicensed spectrum, provided using wireless facilities.

65 "Wireless services provider" means a provider of wireless services.

66 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
67 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
68 of supporting wireless facilities. "Wireless support structure" does not include any telephone or
69 electrical utility pole or any tower used for the distribution or transmission of electrical service.

70 **§ 15.2-2316.4. Zoning; small cell facilities.**

71 A. A locality shall not require that a special exception, special use permit, or variance be obtained
72 for any small cell facility installed by a wireless services provider or wireless infrastructure provider on
73 an existing structure, provided that the wireless services provider or wireless infrastructure provider (i)
74 has permission from the owner of the structure to co-locate equipment on that structure and (ii) notifies
75 the locality in which the permitting process occurs.

76 B. Localities may require administrative review for the issuance of any required zoning permits for
77 the installation of a small cell facility by a wireless services provider or wireless infrastructure provider
78 on an existing structure. Localities shall permit an applicant to submit up to 35 permit requests on a
79 single application. In addition:

80 1. A locality shall approve or disapprove the application within 60 days of receipt of the complete
81 application. Within 10 days after receipt of an application and a valid electronic mail address for the
82 applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete
83 and specify any missing information; otherwise, the application shall be deemed complete. Any
84 disapproval of the application shall be in writing and accompanied by an explanation for the
85 disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an
86 additional 30 days. The application shall be deemed approved if the locality fails to act within the
87 initial 60 days or an extended 30-day period.

88 2. A locality may prescribe and charge a reasonable fee for processing the application not to
89 exceed:

90 a. \$100 each for up to five small cell facilities on a permit application; and

91 b. \$50 for each additional small cell facility on a permit application.

92 3. Approval for a permit shall not be unreasonably conditioned, withheld, or delayed.

93 4. The locality may disapprove a proposed location or installation of a small cell facility only for the
94 following reasons:

95 a. Material potential interference with other pre-existing communications facilities or with future
96 communications facilities that have already been designed and planned for a specific location or that
97 have been reserved for future public safety communications facilities;

98 b. The public safety or other critical public service needs;

99 c. Only in the case of an installation on or in publicly owned or publicly controlled property,
100 excluding privately owned structures where the applicant has an agreement for attachment to the
101 structure, aesthetic impact or the absence of all required approvals from all departments, authorities,
102 and agencies with jurisdiction over such property; and

103 d. Conflict with an applicable local ordinance adopted pursuant to § 15.2-2306 or pursuant to local
104 charter on a historic property that is not eligible for the review process established under 54 U.S.C.
105 § 306108.

106 5. Nothing shall prohibit an applicant from voluntarily submitting, and the locality from accepting,
107 any conditions that otherwise address potential visual or aesthetic effects resulting from the placement
108 of small cell facilities.

109 6. Nothing in this section shall preclude a locality from adopting reasonable rules with respect to the
110 removal of abandoned wireless support structures or wireless facilities.

111 C. Notwithstanding anything to the contrary in this section, the installation, placement, maintenance,
112 or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between
113 existing utility poles in compliance with national safety codes shall be exempt from locality-imposed
114 permitting requirements and fees.

115 **§ 15.2-2316.5. Moratorium prohibited.**

116 A locality shall not adopt a moratorium on considering zoning applications submitted by wireless
117 services providers or wireless infrastructure providers.

118 **CHAPTER 15.1.**

119 **WIRELESS COMMUNICATIONS INFRASTRUCTURE.**

120 **§ 56-484.26. Definitions.**

121 As used in this chapter, unless the context requires a different meaning:

122 "Antenna" means communications equipment that transmits or receives electromagnetic radio signals
123 used in the provision of any type of wireless communications services.

124 "Co-locate" means to install, mount, maintain, modify, operate, or replace a wireless facility on,
125 under, within, or adjacent to a base station, building, existing structure, utility pole, or wireless support
126 structure. "Co-location" has a corresponding meaning.

127 "Department" means the Department of Transportation.

128 "Districtwide permit" means a permit granted by the Department to a wireless services provider or
129 wireless infrastructure provider that allows the permittee to use the rights-of-way under the
130 Department's jurisdiction to install or maintain small cell facilities on existing structures in one of the
131 Commonwealth's nine construction districts. A districtwide permit allows the permittee to perform
132 multiple occurrences of activities necessary to install or maintain small cell facilities on non-limited
133 access right-of-way without obtaining a single use permit for each occurrence. The central office permit
134 manager shall be responsible for the issuance of all districtwide permits. The Department may authorize
135 districtwide permits covering multiple districts.

136 "Existing structure" means any structure that is installed or approved for installation at the time a
137 wireless services provider or wireless infrastructure provider provides notice to a locality or the
138 Department of an agreement with the owner of the structure to co-locate equipment on that structure.
139 "Existing structure" includes any structure that is currently supporting, designed to support, or capable
140 of supporting the attachment of wireless facilities, including towers, buildings, utility poles, light poles,
141 flag poles, signs, and water towers.

142 "Micro-wireless facility" means a small cell facility that is not larger in dimension than 24 inches in
143 length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer
144 than 11 inches.

145 "Small cell facility" means a wireless facility that meets both of the following qualifications: (i) each
146 antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an
147 antenna that has exposed elements, the antenna and all of its exposed elements could fit within an
148 imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with
149 the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is
150 established by the Federal Communications Commission. The following types of associated equipment
151 are not included in the calculation of equipment volume: electric meter, concealment,
152 telecommunications demarcation boxes, ground-based enclosures, back-up power systems, grounding
153 equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power
154 and other services.

155 "Utility pole" means a structure owned, operated, or owned and operated by a public utility, local
156 government, or the Commonwealth that is designed specifically for and used to carry lines, cables, or
157 wires for communications, cable television, or electricity.

158 "Water tower" means a water storage tank, or a standpipe or an elevated tank situated on a support
159 structure, originally constructed for use as a reservoir or facility to store or deliver water.

160 "Wireless facility" means equipment at a fixed location that enables wireless services between user
161 equipment and a communications network, including (i) equipment associated with wireless services,
162 such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed
163 wireless services, such as microwave backhaul, and (ii) radio transceivers, antennas, coaxial, or
164 fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of
165 technological configuration.

166 "Wireless infrastructure provider" means any person, including a person authorized to provide
167 telecommunications service in the state, that builds or installs transmission equipment, wireless facilities,
168 or wireless support structures, but that is not a wireless services provider.

169 "Wireless services" means (i) "personal wireless services" as defined in 47 U.S.C. § 332(c)(7)(C)(i);
170 (ii) "personal wireless service facilities" as defined in 47 U.S.C. § 332(c)(7)(C)(ii), including commercial
171 mobile services as defined in 47 U.S.C. § 332(d), provided to personal mobile communication devices
172 through wireless facilities; and (iii) any other fixed or mobile wireless service, using licensed or
173 unlicensed spectrum, provided using wireless facilities.

174 "Wireless services provider" means a provider of wireless services.

175 "Wireless support structure" means a freestanding structure, such as a monopole, tower, either guyed
176 or self-supporting, or suitable existing structure or alternative structure designed to support or capable
177 of supporting wireless facilities. "Wireless support structure" does not include any telephone or
178 electrical utility pole or any tower used for the distribution or transmission of electrical service.

179 **§ 56-484.27. Access to the public rights-of-way by wireless services providers and wireless**
180 **infrastructure providers; generally.**

181 A. No locality or the Department shall impose on wireless services providers or wireless
182 infrastructure providers any restrictions or requirements concerning the use of the public rights-of-way,

183 including the permitting process, the zoning process, notice, time and location of excavations and repair
184 work, enforcement of the statewide building code, and inspections, that are unfair, unreasonable, or
185 discriminatory.

186 B. No locality or the Department shall require a wireless services provider or wireless infrastructure
187 provider to provide in-kind services or physical assets as a condition of consent to use public
188 rights-of-way or easements. This shall not limit the ability of localities, their authorities or commissions
189 that provide utility services, or the Department to enter into voluntary pole attachment, tower
190 occupancy, conduit occupancy, or conduit construction agreements with wireless services providers or
191 wireless infrastructure providers.

192 C. No locality or the Department shall adopt a moratorium on considering requests for access to the
193 public rights-of-way from wireless services providers or wireless infrastructure providers.

194 **§ 56-484.28. Access to public rights-of-way operated and maintained by the Department for the**
195 **installation and maintenance of small cell facilities on existing structures.**

196 A. Upon application by a wireless services provider or wireless infrastructure provider, the
197 Department shall issue a districtwide permit, consistent with applicable regulations that do not conflict
198 with this chapter, granting access to public rights-of-way that it operates and maintains to install and
199 maintain small cell facilities on existing structures in the rights-of-way. The application shall include a
200 copy of the agreement under which the applicant has permission from the owner of the structure to the
201 co-location of equipment on that structure. If the application is received on or after September 1, 2017,
202 (i) the Department shall issue the districtwide permit within 30 days after receipt of the application and
203 (ii) the districtwide permit shall be deemed granted if not issued within 30 days after receipt of the
204 complete application. Within 10 days after receipt of an application and a valid electronic mail address
205 for the applicant, the Department shall notify the applicant by electronic mail whether the application is
206 incomplete and specify any missing information; otherwise, the application shall be deemed complete. A
207 districtwide permit issued for the original installation shall allow the permittee to repair, replace, or
208 perform routine maintenance operations to small cell facilities once installed.

209 B. The Department may require a separate single use permit to allow a wireless services provider or
210 wireless infrastructure provider to install and maintain small cell facilities on an existing structure when
211 such activity requires (i) working within the highway travel lane or requiring closure of a highway
212 travel lane; (ii) disturbing the pavement, shoulder, roadway, or ditch line; (iii) placement on limited
213 access rights-of-way; or (iv) any specific precautions to ensure the safety of the traveling public or the
214 protection of public infrastructure or the operation thereof. Upon application by a wireless services
215 provider or wireless infrastructure provider, the Department may issue a single use permit granting
216 access to install and maintain small cell facilities in such circumstances. If the application is received
217 on or after September 1, 2017, (a) the Department shall approve or disapprove the application within
218 60 days after receipt of the application, which 60-day period may be extended by the Department in
219 writing for a period not to exceed an additional 30 days and (b) the application shall be deemed
220 approved if the Department fails to approve or disapprove the application within the initial 60 days and
221 any extension thereof. Any disapproval of an application for a single use permit shall be in writing and
222 accompanied by an explanation of the reasons for the disapproval.

223 C. The Department shall not impose any fee for the use of the right-of-way on a wireless services
224 provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing
225 structure in the right-of-way. However, the Department may prescribe and charge a reasonable fee not
226 to exceed \$250 for processing an application for a districtwide or single use permit.

227 D. The Department shall not impose any fee or require a permit for the installation, placement,
228 maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are
229 strung between existing utility poles in compliance with national safety codes. However, the Department
230 may require a single use permit if such activities (i) involve working within the highway travel lane or
231 require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line;
232 (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure
233 the safety of the traveling public or the protection of public infrastructure or the operation thereof, and
234 either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with
235 terms of the existing permit for that facility or the structure upon which it is attached.

236 **§ 56-484.29. Access to locality rights-of-way for installation and maintenance of small cell facilities**
237 **on existing structures.**

238 A. Upon application by a wireless services provider or wireless infrastructure provider, a locality
239 may issue a permit granting access to the public rights-of-way it operates and maintains to install and
240 maintain small cell facilities on existing structures. Such a permit shall grant access to all rights-of-way
241 in the locality for the purpose of installing small cell facilities on existing structures, provided that the
242 wireless services provider or wireless infrastructure provider (i) has permission from the owner of the
243 structure to co-locate equipment on that structure and (ii) provides notice of the agreement and
244 co-location to the locality. The locality shall approve or disapprove any such requested permit within 60

days of receipt of the complete application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the locality shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. Any disapproval shall be in writing and accompanied by an explanation for the disapproval. The 60-day period may be extended by the locality in writing for a period not to exceed an additional 30 days. The permit request shall be deemed approved if the locality fails to act within the initial 60 days or an extended 30-day period. No such permit shall be required for providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water, and sanitary sewer services that, as of July 1, 2017, already have facilities lawfully occupying the public rights-of-way under the locality's jurisdiction.

B. Localities shall not impose any fee for the use of the rights-of-way, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, on a wireless services provider or wireless infrastructure provider to attach or co-locate small cell facilities on an existing structure in the right-of-way. However, a locality may prescribe and charge a reasonable fee not to exceed \$250 for processing a permit application under subsection A.

C. Localities shall not impose any fee or require any application or permit for the installation, placement, maintenance, or replacement of micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes. However, the locality may require a single use permit if such activities (i) involve working within the highway travel lane or require closure of a highway travel lane; (ii) disturb the pavement, shoulder, roadway, or ditch line; (iii) include placement on limited access rights-of-way; or (iv) require any specific precautions to ensure the safety of the traveling public or the protection of public infrastructure or the operation thereof, and either were not authorized in or will be conducted in a time, place, or manner that is inconsistent with terms of the existing permit for that facility or the structure upon which it is attached.

§ 56-484.30. Agreements for use of public right-of-way to construct new wireless support structures; relocation of wireless support structures.

Subject to any applicable requirements of Article VII, Section 9 of the Constitution of Virginia, public right-of-way permits or agreements for the construction of wireless support structures issued on or after July 1, 2017, shall be for an initial term of at least 10 years, with at least three options for renewal for terms of five years, subject to terms providing for earlier termination for cause or by mutual agreement. Nothing herein is intended to prohibit the Department or localities from requiring permittees to relocate wireless support structures when relocation is necessary due to a transportation project or material change to the right-of-way, so long as other users of the right-of-way are required to relocate. Such relocation shall be completed as soon as reasonably possible within the time set forth in any written request by the Department or a locality for such relocation, as long as the Department or a locality provides the permittee with a minimum of 180 days' advance written notice to comply with such relocation, unless circumstances beyond the control of the Department or the locality require a shorter period of advance notice. The permittee shall bear only the proportional cost of the relocation that is caused by the transportation project and shall not bear any cost related to private benefit or where the permittee was on private right-of-way. If the locality or the Department bears any of the cost of the relocation, the permittee shall not be obligated to commence the relocation until it receives the funds for such relocation. The permittee shall have no liability for any delays caused by a failure to receive funds for the cost of such relocation, and the Department or a locality shall have no obligation to collect such funds. If relocation is deemed necessary, the Department or locality shall work cooperatively with the permittee to minimize any negative impact to the wireless signal caused by the relocation. There may be emergencies when relocation is required to commence in an expedited manner, and in such situations the permittee and the locality or Department shall work diligently to accomplish such emergency relocation.

§ 56-484.31. Attachment of small cell facilities on government-owned structures.

A. If the Commonwealth or a locality agrees to permit a wireless services provider or a wireless infrastructure provider to attach small cell facilities to government-owned structures, both the government entity and the wireless services or wireless infrastructure provider shall negotiate in good faith to arrive at a mutually agreeable contract terms and conditions.

B. The rates, terms, and conditions for such agreement shall be just and reasonable, cost-based, nondiscriminatory, and competitively neutral, and shall comply with all applicable state and federal laws. However, rates for attachments to government-owned buildings may be based on fair market value.

C. For utility poles owned by a locality or the Commonwealth that support aerial cables used for video, communications, or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. § 224 and implementing regulations. The good faith estimate of the government

entity owning or controlling the utility pole for any make-ready work necessary to enable the utility pole to support the requested co-location shall include pole replacement if necessary.

D. For utility poles owned by a locality or the Commonwealth that do not support aerial cables used for video, communications, or electric service, the government entity owning or controlling the utility pole shall provide a good faith estimate for any make-ready work necessary to enable the utility pole to support the requested co-location, including pole replacement, if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written acceptance of the good faith estimate by the wireless services provider or a wireless infrastructure provider.

E. The government entity owning or controlling the utility pole shall not require more make-ready work than required to meet applicable codes or industry standards. Charges for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other wireless services providers, providers of telecommunications services, and nonpublic providers of cable television and electric services for similar work and shall not include consultants' fees or expenses.

F. The annual recurring rate to co-locate a small cell facility on a government-owned utility pole shall not exceed the actual, direct, and reasonable costs related to the wireless services provider's or wireless infrastructure provider's use of space on the utility pole. In any controversy concerning the appropriateness of the rate, the government entity owning or controlling the utility pole shall have the burden of proving that the rates are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the utility pole for such period.

G. This section shall not apply to utility poles, structures, or property of an electric utility owned or operated by a municipality or other political subdivision.